INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — COMMISSION'S POWER TO INTERROGATE. — In the course of an investigation the Interstate Commerce Commission interrogated the defendant with the object of ascertaining whether the directors of a railroad engaged in interstate business had expended its funds while the defendant was an officer of the railroad in buying stocks at inflated prices, or stocks that should not have been purchased. On refusal to answer, suit was instituted to compel him to do so. *Held*, that he be directed to answer. *Interstate Commerce Commission* v. *Harriman*, 157 Fed. 432 (Circ. Ct., S. D. N. Y.). See NOTES, p. 431.

LIBEL AND SLANDER — ACTS AND WORDS ACTIONABLE — DEFAMATION OF PLAINTIFF'S SISTER. — Under the title "Divided House of the M's" the defendant published that the plaintiff's sister had been arrested for larceny. *Held*, that it was error to sustain a demurrer to the plaintiff's suit for libel. *Merrill* v. *Post Publishing Co.*, 83 N. E. 419 (Mass.).

Ordinarily an action for defamation is confined to the person directly assailed. Libel of a partner in his private life is not libel of the partnership. *Haythorn* v. *Lawson*, 3 C. & P. 196. And no action is allowed for the slander of a deceased relative. *Wellman* v. *Sun Printing, etc., Ass'n*, 66 Hun (N. Y.) 331. It is true that suit for libel of a wife may be brought in the husband's name, but the action lapses on her death. See ODGERS, LIBEL AND SLANDER, 4 ed., 530. Moreover, defamation of a sister uttered in an action by the defendant against her brother has been held to give the brother no action for slander. *Subbaiyer* v. *Kristnaiyar*, I. L. R. 1 Mad. 383. This case, however, was distinguished from the present case on the ground that the plaintiff's name was not there mentioned. A similar distinction has been made where a corporation sues for libel because of the defamation of its manager. *N. Y. Bureau of Information* v. *Ridgway-Thayer Co*, 104 N. Y. Supp. 202. The distinction seems unsupportable since in each case the plaintiff's standing in the community is damaged. Hence to allow him to recover in an action of libel is extending the previous limits of the action and enlarging the absolute liability where no special damages need be proved. An action should lie, however, for actual damages proximately caused by the defendant's tort. See *Riding* v. *Smith*, 1 Ex. D. 91.

LIBEL AND SLANDER — ACTS AND WORDS ACTIONABLE — WORDS CHARGING INSTITUTION OF DIVORCE PROCEEDINGS. — The defendant falsely published that the plaintiff's husband had instituted a suit for divorce against the plaintiff in the New Jersey courts. A divorce may be granted in New Jersey for incompatibility of temperaments. *Held*, that the publication is libellous *per se*. *O'Neill* v. *Star Co.*, 121 N. Y. App. Div. 849.

In a similar case a co-respondent was named, and the imputation was therefore clearly defamatory. *Regina* v. *Leng*, 34 J. P. 309. But the present finding seems entirely reasonable notwithstanding the possible meaning of the publication under the New Jersey divorce law, and assuming that such meaning is not actionable. That the statement is merely capable of a special innocent meaning is not conclusive; words are no longer, as formerly, construed *in mitiori sensu*, but in the plain sense in which the rest of the world naturally understands them. See *Roberts* v. *Camden*, 9 East 93, 96. Nor should a presumption of knowledge of a technical sense of the words be raised to rebut their otherwise libellous character in the minds of right-thinking people. The presumption — or fiction — that every one knows the law cannot be pushed to such an extent. The same principle seems to be involved in those cases where it is actionable to charge acts commonly understood to be criminal, though they do not legally constitute a crime; for example, words imputing larceny of common property by a co-tenant are actionable *per se*. *Williams* v. *Miner*, 18 Conn. 464.

MANDAMUS — ACTS SUBJECT TO MANDAMUS — PERFORMANCE OF DUTIES IMPOSED BY STATUTE AUTHORIZING USE OF STREETS. — A city petitioned for *mandamus* to compel a telephone company to file a statement of its receipts and to pay a tax thereon, in accordance with a municipal ordinance granting

the use of the streets, which the company had accepted. *Held*, that *mandamus* does not lie. *City of Chicago* v. *Chicago Telephone Co.*, 82 N. E. 607 (Ill.).

Though ordinary contractual duties, even if owed to a state, are not enforceable by *mandamus*, duties imposed by municipal ordinances in granting to quasi-public corporations the use of streets are not contractual merely. *People* v. *Suburban R. R. Co.*, 178 Ill. 594. For, whether the grant is properly considered a franchise given by the municipality under authority delegated by the state, or, as in Illinois, a license sanctioned by the state, the duties are imposed as conditions of the grant of a public privilege and are legal obligations owed ultimately to the state. *Richmond, etc., Co.* v. *Brown*, 97 Va. 26; *Chicago, etc., Co.* v. *Town of Lake*, 130 Ill. 42. If, then, a relator seeks to enforce these duties by *mandamus*, the writ should be granted. *Richmond, etc., Co.* v. *Brown, supra*. For, even according to the early definition of *mandamus*, it lay for the enforcement of legal obligations imposed by statute or charter. *King* v. *Wheeler*, Cas. t. Hardw. 99. And the application of *mandamus* has been greatly extended. *Rex v. Barker*, 3 Burr. 1265; *American, etc., Co.* v. *Haven*, 101 Mass. 398. According to the modern notions, benefit to the general public from performance, it is submitted, is a circumstance in showing that obligations are enforceable by *mandamus*. But the present case reaches its erroneous conclusion by making such benefit the determining circumstance.

NEGLIGENT MISREPRESENTATION — NEGLIGENTLY PREPARED ABSTRACT OF TITLE. — The plaintiff alleged that the defendant company was engaged in making abstracts of title to realty; that it was customary for purchasers of realty, even though under no contract relation with the defendant, to rely thereon; and that the plaintiff was damaged by acting on a negligently defective abstract made by the defendant. The defendant demurred. *Held*, that the demurrer be sustained. *Thomas* v. *Guarantee Title & Trust Co.*, Oh., Circ. Ct. Cuyahoga Co., Nov. 18, 1907. See NOTES, p. 439.

NEW TRIAL — GROUNDS FOR GRANTING NEW TRIAL — MOTION ON GROUND OF NEWLY DISCOVERED EVIDENCE UNACCOMPANIED BY AFFIDAVIT OF WITNESS. — On a motion for a new trial on grounds of newly discovered evidence the applicant produced the affidavit of a person other than the witness as to statements made by a non-resident witness who had refused to make an affidavit. *Held*, that it is error to refuse to consider it. *Soebel* v. *Boston Elevated Ry. Co.*, 83 N. E. 3 (Mass.).

As the question involved is not the truth of certain evidence but its existence, and as no question of what should or should not be admitted at the trial is involved, the ordinary hearsay rule does not here apply. *Lansky* v. *West End St. Ry. Co.*, 173 Mass. 20; *contra*, *Sheppard* v. *Sheppard*, 10 N. J. L. 250, 254. In general, the facts upon which the motion is based must be shown by the best evidence. Therefore the affidavit of the witness from whom the newly found evidence is expected must ordinarily accompany the motion. *Cardell* v. *Lawton*, 16 Vt. 606. But the rule is subject to exceptions within the discretion of the court. And if the absence of such an affidavit can be satisfactorily accounted for, as where the witness is out of the state, and his affidavit cannot be obtained, any evidence that will convince the court that he can give important new testimony may be shown. *Smith* v. *Cushing*, 18 Wis. 295; *Read* v. *Staton*, 3 Hayw. (Tenn.) 159. Under these circumstances hearsay is admissible, and the affidavit of one who has heard the statements of the witness may be received. *Eddy* v. *Caldwell*, 7 Minn. 225.

PUBLIC OFFICERS — DE FACTO OFFICERS — VALIDITY OF ACTS WHERE NO DE JURE OFFICE. — The plaintiff was discharged from the police force by a police board created by a statute later declared unconstitutional. He now seeks reinstatement on the ground that the acts of its incumbents could not be valid as those of *de facto* officers, since there was no *de jure* board. *Held*, that he is not entitled to reinstatement. *Lang* v. *Mayor of Bayonne*, 68 Atl. 90 (N. J., Ct. Err. and App.).